

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.932 OF 2017

Sachin Prakash Gagwani ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

WITH

CRIMINAL APPLICATION NO.513 OF 2017

IN

ANTICIPATORY BAIL APPLICATION NO.932 OF 2017

Hemlata Sachin Gagwani @

Hemlata Rewachand Dablani ... **Applicant/Intervenor**

In the Matter in Between :

Sachin Prakash Gagwani ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Wasim Ansari, Advocate for the Applicant.

None for the Intervenor in APPP/513/2107.

Mr.S.V.Gavand, APP for the Respondent/State.

Ms.Kajal More, API, MHB Police Station is present in person.

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CORAM : A.M.BADAR J.

DATED : 4th DECEMBER 2017.

P.C. :

1 The applicant/accused in Crime No.143 of 2017 registered with M.H.B. Police Station, Mumbai at the instance of his wife Hemlata Sachin Gagwani, by this application, is seeking pre-arrest bail.

2 Heard the learned Advocate appearing for the applicant/accused as well as the learned Additional Public Prosecutor.

3 The learned Additional Public Prosecutor opposed the application by contending that the FIR is specifically mentioning the overt acts of the part of the present applicant so far as offences punishable under Sections 498-A and 377 of the Indian Penal Code are concerned. It is further argued by the learned Additional Public Prosecutor that the FIR reveals that the present applicant had taken gold ornaments of the First Informant without her consent and did not return the same to her.

4 None appeared for the Intervenor.

5 I have carefully considered the rival submissions and also perused the material made available including the FIR lodged by First Informant Hemlata.

6 It is seen that on 05/06/2015, the First Informant married the present applicant and since then she started cohabiting with the present applicant in his joint family. The First Informant averred that she was provided with stale food during

her stay at her matrimonial house and that the present applicant was not taking care of her health. It is vaguely alleged that on 29/03/2016, the applicant had carnal intercourse with the First Informant against the order of nature. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, the First Informant averred that her mother had given some gold ornaments to her, but her mother-in-law had taken those gold ornaments from her. It is further averred that the accused persons were insisting the First Informant to bring ornaments and cash from her parental relatives and for that reason they used to beat her. They were not allowing her to use the bathroom and toilet of the house.

7 Explanation to Section 498-A of the Indian Penal Code defined 'cruelty'. The conduct expected to bring home the guilt for this offence is of such a magnitude so as to drive a married woman either to commit suicide or to cause injury to her life or limb. The averments in the FIR will have to be tested on the touchstone of the Explanation to Section 498-A of the Indian Penal Code during the course of trial. The offence alleged is matrimonial in nature.

8 Considering the nature of offence as well as the evidence to bring home the guilt to the accused, the custodial interrogation of the present applicant is not warranted. Interest of the prosecution can be served if the applicant is directed to attend

the concerned Police Station in order to join the investigation.
Therefore, the Order :

- (i) The application is allowed.
- (ii) In the event of his arrest, in Crime No.143 of 2017 for the offences punishable under Sections 498-A, 406, 377, 323, 504 read with Section 34 of the Indian Penal Code registered with M.H.B. Police Station, Mumbai at the instance of his wife Hemlata Sachin Gagwani, the applicant/accused be released on bail on his executing P.R.Bond in the sum of Rs.25,000/- and on furnishing one or two surety in the like amount.
- (iii) As a condition of this Order, the applicant/accused should attend the concerned Police Station on every Saturday and Sunday from 11.00 a.m. to 2.00 p.m. and he should cooperate the Investigator. The condition regarding his attendance is up to filing of the charge-sheet.
- (iv) The applicant/accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or to the Police Officer.

- (v) As a condition of this Order, the applicant should not tamper with the prosecution evidence.
- (vi) With disposal of this present application, Criminal Application bearing No.513 of 2017 stands disposed of

(A.M.BADAR J.)